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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION ONE

In re A.J., a Person Coming Under the Juvenile Court Law.	
HUMBOLDT COUNTY DEPARTMENT OF HEALTH & HUMAN SERVICES, Plaintiff and Respondent, v. M.J., Defendant and Appellant.	A148093 (Humboldt County Super. Ct. No. JV150020)

A.J. (minor), the infant son of appellant M.J. (Mother), was detained and placed with Mother's sister. After Mother's reunification services were terminated, she learned her sister did not want to assume permanent care of the minor. Prior to a hearing under Welfare and Institutions Code[1] section 366.26, Mother filed a motion seeking (1) resumption of her reunification services and (2) consideration of other family members for custody of the minor if his placement was taken from her sister. The juvenile court denied Mother's motion, terminated her parental rights, and selected adoption as the permanent plan for the minor.

Mother argues the juvenile court erred in denying her motion for consideration of placement with her relatives. We affirm, concluding Mother lacks standing to challenge the juvenile court's placement decision.

[1] All statutory references are to the Welfare and Institutions Code.

I. BACKGROUND

The Humboldt County Department of Health & Human Services detained minor, then 15 months old, in January 2015. The petition alleged that Mother failed to provide him proper medical care, allowed heroin and other drugs to be used in her home, and failed to make proper arrangements for the minor's care after her arrest. (§ 300, subds. (a), (b), (g).) The minor was placed with Mother's sister, and a reunification plan was adopted requiring Mother to attend a substance abuse treatment program, among other measures. By the time of the six-month review hearing, Mother had shown little interest in visiting with the minor, had not seriously participated in drug treatment, and continued frequent use of alcohol, opiates, and marijuana. After a contested hearing in November 2015, the juvenile court terminated Mother's reunification services and scheduled a hearing under section 366.26.

Mother has a second child, two years older than the minor, by a different father. This child, the minor's half sister, was detained at the same time as the minor and placed with her paternal grandmother. Through her father's family, the minor's half sister is a member of an Indian tribe, and her placement was constrained by the Indian Child Welfare Act of 1978 (25 U.S.C. § 1901 et seq.). The tribe took the position that guardianship in the paternal grandmother's home was the appropriate permanent plan for her care, and the Agency agreed, concluding that "moving her would be detrimental." Because the half sister's grandmother was unwilling to provide a permanent placement for the minor, however, this precluded a joint placement for the children.

Shortly before the scheduled 366.26 hearing, Mother filed a motion under section 388 requesting reinstatement of her reunification services and seeking placement of the minor with another relative, pursuant to section 361.3, if he was removed from her sister's home. In support of the motion, Mother claimed to be participating in a drug treatment program and listed five persons to be considered for the minor's placement.

In a report prepared for the section 366.26 hearing, the Agency noted the minor was an adoptable child, but his aunt was not willing to care for him permanently. As a result, the Agency had explored other potential adoptive parents, including Mother's

parents. Although they were willing to accept a placement, the Agency concluded "neither of these relatives is appropriate to provide long-term care" for the minor. No other relatives were willing to be assessed for placement. As a result, the Agency had located an unrelated foster family who "has expressed interest in adopting [the minor] and has begun visiting with him. This family understands the importance of keeping [the minor] connected to his sister and has agreed to help facilitate an ongoing relationship between the siblings."

In a separate report filed in response to Mother's section 388 motion, the Agency refuted Mother's claim to be involved in drug treatment. According to the Agency, Mother had twice attended programs since the termination of reunification services, but her participation lasted for only one day in the first instance and a week in the second. Further, in the two months prior to the filing of her motion, Mother had canceled more weekly visitation sessions with the minor than she had attended. The Agency also recounted its review of the various possible relative placements for the minor, explaining its conclusion that no appropriate relative placement was available.

At the section 366.26 hearing, Mother's counsel asked "that the relatives be assessed per [section] 361.3," specifically mentioning a maternal aunt in Merced County and disputing the Agency's stated grounds for ruling out her father. The Agency responded it had assessed "the relatives that have come forward" and disputed Mother's standing to request relative placement under section 361.3. The juvenile court denied Mother's section 388 motion for consideration of relative placement on grounds she lacked standing to raise the issue.

When the court turned to Mother's request for resumption of reunification services, her counsel declined to argue. The court denied the motion, concluding on the basis of the Agency's response that Mother's claim of progress was false.

With respect to the issues raised by the section 366.26 hearing, Mother requested her parental rights not be terminated on grounds of the "sibling relationship." Counsel acknowledged the two children were likely to be in different placements and was concerned there was "no actual guarantee" their relationship would be maintained under a

permanent plan, particularly if the minor was placed with nonrelative foster parents. Counsel therefore argued it was premature to go forward with the section 366.26 determination. The Agency argued Mother had failed to carry her burden, contending "[s]he hasn't actually set forth any evidence that that sibling relationship exists and will be broken if the Court does order adoption today." The juvenile court terminated Mother's parental rights and ordered adoption as the permanent plan for the minor.

II. DISCUSSION

Mother challenges the juvenile court's denial of her section 388 motion for consideration of the minor's placement with her relatives. We agree with the Agency that Mother lacks standing to appeal the court's decision, but we would, in any event, find no error in its handling of her motion.

The leading case governing parental standing to appeal dependency placement decisions is *In re K.C.* (2011) 52 Cal.4th 231 (*K.C.*). In that case, the juvenile court bypassed reunification services to both parents. (*Id.* at pp. 234–235.) Prior to the section 366.26 hearing, the father's parents filed a section 388 motion seeking placement of the child in their home. (*K.C.*, at p. 235.) At the hearing, the father supported this motion, but he did not argue against the termination of his parental rights. He thereafter appealed the denial of his parents' motion, but he did not appeal the termination of his parental rights. (*Ibid*.)

In addressing the father's standing to appeal, the Supreme Court explained: "Not every party has standing to appeal every appealable order. Although standing to appeal is construed liberally, and doubts are resolved in its favor, only a person aggrieved by a decision may appeal. [Citations.] An aggrieved person, for this purpose, is one whose rights or interests are injuriously affected by the decision in an immediate and substantial way, and not as a nominal or remote consequence of the decision." (*K.C.*, *supra*, 52 Cal.4th at p. 236.) With respect to the father's interest, the court recognized parents have a compelling interest in the custody and management of their children. Once reunification services are terminated or bypassed, however, " 'the parents' interest in the care, custody and companionship of the child [is] no longer paramount. Rather, at this

point "the focus shifts to the needs of the child for permanency and stability . . . ." ' [Citation.] For this reason, the decision to terminate or bypass reunification services ordinarily constitutes a sufficient basis for terminating parental rights. [Citation.] A few statutory exceptions to this rule permit the juvenile court not to terminate parental rights when compelling reasons show termination would be detrimental to the child. [Citation.] But father did not argue below, and does not argue now, that any such exception applies. Indeed, as noted, father does not contend the order terminating his parental rights was improper in any respect. That he has no remaining, legally cognizable interest in K.C.'s affairs, including his placement, logically follows." (*Id.* at pp. 236–237.)

The court distinguished two earlier Court of Appeal cases finding parental standing on the basis that, in those decisions, resolution of the placement issue could have prevented the termination of parental rights. In the first, *In re H.G.* (2006) 146 Cal.App.4th 1 (*H.G.*), the parents appealed the removal of their child from the custody of her grandparents. (*Id.* at p. 4.) The Court of Appeal found standing to appeal the placement decision because continued placement with the grandparents might have permitted the parents to avoid termination of their parental rights under section 366.26, subdivision (c)(1)(A). That subdivision allows for maintenance of parental rights if the child is living with a relative who is unable to adopt but who is willing to become the child's legal guardian. (*K.C.*, *supra*, 52 Cal.4th at pp. 237–238.) In the second, *In re Esperanza C.* (2008) 165 Cal.App.4th 1042 (*Esperanza C.*), a mother appealed an order denying a section 388 motion for placement of the child, entered immediately prior to an order terminating her parental rights. The court found standing to appeal the placement decision, explaining, "This court has also recognized that placement of a child with a relative has the potential to alter the juvenile court's determination of the child's best interests and the appropriate permanency plan for that child, and may affect a parent's interest in his or her legal status with respect to the child." (*Esperanza C.*, at p. 1054.)

From its consideration of these two decisions, the *K.C.* court "derive[d] the following rule: A parent's appeal from a judgment terminating parental rights confers

standing to appeal an order concerning the dependent child's placement only if the placement order's reversal advances the parent's argument against terminating parental rights." (*K.C.*, *supra*, 52 Cal.4th at p. 238.) Because the child's father did not contest the termination of his parental rights in the juvenile court, the court concluded, he "relinquished the only interest in K.C. that could render him aggrieved by the juvenile court's order declining to place the child with grandparents." (*Ibid.*, fn. omitted.)

Applying *K.C.* and the authorities discussed above, we conclude Mother lacks standing to appeal the juvenile court's denial of her section 388 motion seeking relative placement. As *K.C.* recognized, "the decision to terminate or bypass reunification services ordinarily constitutes a sufficient basis for terminating parental rights." (*K.C.*, *supra*, 52 Cal.4th at pp. 236–237.) Accordingly, a parent, like Mother, whose reunification services have been terminated ordinarily lacks standing to appeal a subsequent placement decision upon termination of parental rights.

The exception to this general rule, as noted above, occurs when the placement decision could also affect the decision to terminate parental rights. That was not the case here. In the juvenile court, Mother's sole ground for opposing the termination of her parental rights was the "sibling relationship" exception of section 366.26, subdivision (c)(1)(B)(v), which permits a court to order guardianship rather than terminate parental rights if "[t]here would be substantial interference with a child's sibling relationship, taking into consideration the nature and extent of the relationship, . . . as compared to the benefit of legal permanence through adoption." "The purpose of [the sibling relationship] exception is to preserve long-standing sibling relationships that serve as 'anchors for dependent children whose lives are in turmoil.' [Citation.] The sibling relationship exception contains 'strong language creating a heavy burden for the party opposing adoption.' " (*In re Isaiah S.* (2016) ___ Cal.App.5th ___ [2016 Cal.App. Lexis 968, at pp. *15–*16] (*Isaiah S.*).)

Although Mother's counsel mentioned this exception, counsel made no serious attempt to argue its application. There is little evidence in the record of the relationship between the siblings, let alone of the type of strong, sustaining relationship that would

justify invocation of the exception. On the contrary, the minor had lived with his half sister for barely more than a year prior to their separation, at which time he was a newborn and infant. There was simply no opportunity for the type of relationship to develop that would overcome the benefits to the minor of adoption. In addition, there was no demonstrated threat to the half siblings' relationship, since the identified adoptive parents were amenable to maintaining contact between them. As Mother's counsel conceded, he cited the exception as a reason for postponing the section 366.26 hearing, not as a genuine argument for guardianship. We conclude that counsel's mention of the sibling relationship exception, in the absence of a prima facie basis for its application, was insufficient to confer standing on Mother to appeal the placement decision.

Unlike the circumstances in *H.G.* and *Esperanza C.*, there was no pretense that Mother's request for relative placement could result in a guardianship under section 366.26, subdivision (c)(1)(A). Mother's request for relative consideration was conditional. She sought placement with the family members only if her sister, with whom the minor was placed, relinquished custody. As events occurred, Mother's sister did not relinquish custody prior to the juvenile court's designation of adoption as the permanent plan, nor was there any suggestion that removal of the minor from her care might be necessary prior to his transfer to the care of the prospective adoptive parents. Because the minor, a healthy two year old, was clearly adoptable, the Agency's consideration of the family members listed by Mother would necessarily have been as potential adoptive parents, not as guardians. Accordingly, the resolution of the placement issue would have had no impact on the termination of Mother's parental rights. She therefore lacks standing to challenge it. (See *Isaiah S., supra*, ___ Cal.App.5th at p. ___ [2016 Cal.App. Lexis 968, at pp. *12–*13] [parent lacks standing to challenge juvenile court's failure to place child with family members when family members would be considered as adoptive parents, not guardians].)

We note that, in any event, Mother's challenge to the juvenile court's denial of her motion would have been unsuccessful because section 361.3 was inapplicable in these circumstances. Section 361.3 requires an agency to give "preferential consideration" to

any "request by a relative of the child" for placement with the relative when a child is removed from his or her parents' custody or "whenever a new placement of the child must be made." (*Id.*, subds. (a), (d).) As explained recently by Justice Streeter of this court in *In re K.L.* (2016) 248 Cal.App.4th 52, "Section 361.3 establishes a relative preference that applies in selecting a temporary placement when a child is removed from parental custody, or thereafter when a new placement of the child is necessary. [Citations.] The section 361.3 relative placement preference does not apply where, as here, the social services agency is seeking an adoptive placement for a dependent child for whom the court has selected adoption as the permanent placement goal." (*Id.* at pp. 65–66, fn. omitted.) Because Mother's sister retained custody of the minor throughout the dependency proceedings, continuing past the juvenile court's selection of adoption as a permanent plan, there was never a "new placement" for which the Agency would consider relatives under section 361.3, subdivision (d). Instead, the change of custody will occur only upon the designation of the minor's prospective adoptive parents, a process to which section 361.3 does not apply.

III. DISPOSITION

The orders of the juvenile court are affirmed.

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Margulies, J.

We concur:

_____
Humes, P.J.

_____
Banke, J.

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In re A.J.